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MAY 31 1991

SPECIAL PROGRAM  
EXAMINATION UNIT

In re Application of :  
Kristoph D. Krug, et al. :  
Serial No. 07/566,083 : DECISION ON PETITION UNDER  
Filed: August 10, 1990 : 37 CFR 1.48(a)  
For: DEVICE AND METHOD FOR :  
INSPECTION OF BAGGAGE AND:  
OTHER OBJECTS :  
:

This is a decision on the petition under 37 CFR 1.48(a) filed February 14, 1991, requesting that the name of the inventors in the application be corrected. The petition is being decided by the undersigned rather than in the examining group so that application processing, including the issuance of the filing receipt, may proceed with the actual inventors being named in the application.

Brief Review of Facts

This application was filed on August 10, 1990, pursuant to 37 CFR 1.53(b) without an executed oath or declaration under 37 CFR 1.63 and named as inventors: Jay A. Stein and Kristoph Krug. The application was filed with a total of 120 claims (see copy of Form PTO-1360 as corrected - attached) and a total of 14 independent claims along with filing fees of \$713 (that were lumped together under the small entity basic statutory filing fee Code 201).

Application Branch mailed a Notice To File Missing Parts of Application on August 29, 1990, requiring an oath or declaration in compliance with 37 CFR 1.63, the filing fees (based on large entity fees levels then in effect and an erroneous number of total claims) and a surcharge for their late submission.

In response to the Notice to File Missing Parts of Application, applicants on February 14, 1991 timely filed (with a petition and fee for a four month extension of time), inter alia, the petition and fee, a small entity statement, the surcharge, \$471 - additional claim fees (that were lumped together under the small entity total additional claim fee Code 203), a \$1.63 declaration (executed by Krug, Stein and Adam L. Taylor), verified statements

of facts by the original named inventors and by patent counsel and a written consent of assignee.

§1.48(a) Petition

The §1.48(a) petition and verified statements of facts show that an error occurred in failing to name Mr. Taylor as a co-inventor, that at the time of initial meetings with patent counsel Krug and Stein were the only inventors of the subject matter that was then discussed, that additional subject matter was later added which it was recognized by the original named inventors raised a question as to whether Mr. Taylor should be named as a co-inventor, that it then became important to file the application right away and that in the rush of things Mr. Krug inadvertently did not inform patent counsel of the need for a further review. The error was discovered after the application was filed when the two original named inventors conducted the previously planned review.

Based on the file record as a whole and the facts as set forth above and in the petition, the error in inventorship occurred without deceptive intent and was diligently corrected.

The section 1.48(a) petition to correct inventorship is Granted.

Fees

It is noted that the boiler plate in the February 14, 1991 small entity statement contains a typographical error in that portion relating to rights held by others in the invention - the reference to §1.9(d) is duplicated and a required reference to §1.9(c) has been omitted - however, the statement is acceptable as no other parties have been identified as holding rights in the invention and it is presumed that a reference to §1.9(c) was intended (a copy of a properly formatted statement is attached). It is apparent that the reference to Vivid Technologies, Inc. in that portion of the statement related to rights in the invention held by others, which would require an additional statement therefrom, was inadvertently placed in that portion as the statement itself was submitted on behalf of Vivid Technologies, Inc.

As the small entity statement filed in support of the payment of small entity fees was not submitted until after the November 5, 1990 fee changes, the small entity filing fee amounts owed are

based on current fee levels. Accordingly, the following filing fees are owed:

\$315	- basic statutory filing fee (Code 201)
\$100	- multiple dependent claim fee (Code 204)
\$1,020	- 101 total claims in excess of 20 (at \$10/claim) (Code 203)
\$330	- 11 total independent claims in excess of 3 (at <u>\$30/claim</u> ) (Code 202)
<u>\$1,765</u>	Total filing fees

The outstanding filing fee deficiency of \$581 (\$1,765 fees owed - \$1,184 amount paid (\$713 + \$471)) will be charged to Deposit Account No. 06-1050 as authorized in the February 14, 1991 Response to Notice Under 37 CFR 1.53(d) (in actuality the previous amounts accounted for under Codes 201 and 203 will be credited and the amounts set forth above will then be charged).

The application is being returned to the Special Handling Unit of Application Branch for further processing with the names of the inventors as shown on the executed declaration under 37 CFR 1.63 filed on February 14, 1991.



Hiram H. Bernstein  
Special Program Examiner  
Office of the Assistant Commissioner  
for Patents

Conferee: Fred A. Silverberg 

Attachments: Form PTO - 1360  
Small entity statement - Small Business Concern

HB/kw